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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,826	07/23/2003	Darrell Orvin Wagner	GUID.619PA	8949
51294	7590	12/26/2006	EXAMINER	
HOLLINGSWORTH & FUNK, LLC 8009 34TH AVE S. SUITE 125 MINNEAPOLIS, MN 55425			PRONE, CHRISTOPHER D	
		ART UNIT	PAPER NUMBER	
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SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/625,826  
Filing Date: July 23, 2003  
Appellant(s): WAGNER ET AL.

MAILED  
DEC 26 2007  
Group 3700

Cardiac Pacemakers, Inc.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11/3/06 appealing from the Office action mailed 3/9/06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**5,445,608                   Chen et al.                   8-1995**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8-11, 44, 46, 47, 49, 50, 53-58, and 61-63 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent 5,445,608 Chen et al.

Chen discloses the same invention being a dissection tool comprising a handle (236), an arcuate shaped elongated dissection member (262), a battery (abstract: 8-6), a switch, and a light source (234), comprising a LED (abstract: 4-5) and a power line.

In regards to claims 8-11 and 61-63 Chen further discloses 2 fluid-channels (254) and (258) adapted to transport an irrigation fluid and a pharmaceutical (antibiotic) agent (8:27-34 and 9:47-51) shown in Fig 17.

#### **(10) Response to Argument**

The applicant argues that the device disclosed by Chen is not a dissection tool for the following reasons: it can't sustain the axial load required to dissect tissue, it is disclosed as being inserted after the area has been accessed with another instrument, and because the word dissect has not been used to describe it. However this is not convincing because the applicant is giving to much weight to the word "dissecting." Online Medical Dictionary simply defines dissecting as "dividing or separating parts of an animal," which the device of Chen clearly does, for example see figures 2A-C where the tissue is clearly separated. Whether or not another device is used to break the skin is irrelevant because the device of Chen is advanced through soft tissue thereby dissecting it. The applicant's arguments that PMMA and rubber silicone cannot withstand the axial loads required are inappropriate and taken out of context. The claims do not specify any load amount or what tissue is being dissected. The device of Chen is inherently capable of being pushed through soft tissue because Chen discloses it may be made from PMMA a known flexible yet resilient material. Some common uses include implantable lenses for the eye and the glass around hockey rinks. Furthermore Chen discloses that the device can be stiffened if desired (column 19 line 17).

The applicant also argues that Chen fails to disclose a light source. However, Chen clearly discloses the use of both a LED and infrared light sources throughout the specification. For example in claims 21-23 of Chen he clearly is claiming the use of a LED or an infrared light sources.

The applicant also argues that Chen fails to disclose a handle. However, Chen clearly discloses a plurality of handles including element 236 as described above and shown in figure 17.

The applicant also argues that Chen fails to disclose a light source adapted to provide a visible locating reference. However, Chen clearly discloses that the device may be seen during implantation with the use of fluoroscopy and imaging in column 19 on lines 17-19.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Christopher Prone



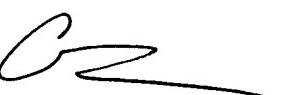
12/15/10

Conferees:

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